A STUDY OF INDIAN CRIMINAL JUSTICE SYSTEM

FROM PERSPECTIVE OF VICTIM

Submitted

A

SYNOPSIS

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"The criminal law in India is not victim-oriented and the suffering of the victim often immeasurable is entirely overlooked in misplaced sympathy for the criminal. Though our modern criminal law is designed to punish as well as reform the criminals, yet it overlooked as the by-product of crime the victims"

Justice Krishna Iyer

1. INTRODUCTION

Crime in the 21st century is more diverse and complex than ever before, both in diversity and severity. Crimes fall into two categories: criminal and non-violent crimes. The list also includes white crimes such as cybercrimes, crimes committed by public authorities, fake dating, and some new crimes such as trafficking in children and women[1]. The court's preoccupation with pending cases makes it difficult to provide immediate justice and justice to victims of crimes and defendants who are currently in prison but have been detained for several years while awaiting a court decision. order. As we have seen in the past, many people in prison without charge are finally released after serving twenty, thirty years or more. This group of victims spent half their lives in prison on false charges, with no legal protection for treatment or compensation. This study argues that we urgently need to ensure the safety, protection and treatment of victims, especially of serious crimes such as rape, gang rape, murder, acid attacks, sexual assault, child abuse and reducing suicide[2]. We forget to meet their needs for safety, protection and recovery. This research asks you

[1]Thakur Sky, *"Victim Compensation in Indian Criminal Justice System*", LAP Lambert Academic Publishing, 2013.

[2]Aftab Alam, "*Human Rights in India: Issue and Challenges",* 1st ed., Raj Publications, Delhi.

to consider the fact that many crimes are still not heard in court at all levels, even though a long time has passed due to fear for the safety of the victim or their witnesses who testified against the defendant. Most often, defendants are released due to lack of evidence or witnesses refusing to testify[3]. Because of the politics and resources available to defendants and their families. So, in *Gubaksh Singh Sibbia v. State of Punjab*[4] case, the Supreme Court held that the expectation would be unreasonable. To exercise the right to allow reliance on Section 438 of the Crimes Act, 1973, the issuance and registration of FIR under Section 154 (1) is not a prerequisite.

In the case of *Gurcharan Singh v. state(Delhi Administration)*[5], the Supreme Court said the possibility of the criminal escaping justice and the ability to control witnesses and evidence were two important reasons why it should not be allowed. The need to protect the rights of victims and identify problems has attracted much attention in recent years[6]. Protect the dignity and recovery of victims. Victims of violence should not be viewed as mere witnesses to the act, and receiving compensation or compensation should not be the goal. Examining the daily lives of victims through research and victim support is important to understanding and addressing the health, safety and survival of victims. The sad truth is that victims of sexual violence such as rape, gang rape, voyeurism and sexual harassment have to face many problems and problems not only during the litigation process but also at the social level. accepted. Therefore, provide true justice to crime victims. This will immediately eliminate the psychological effects of intellectual property crime for victims. Two of the most important rights and fundamental rights of all victims are immediate treatment and protection and protection from danger to life from the moment the crime is committed until its fair time.

According to the new regulations, all trials or investigations regarding sexual offenses must be completed within two months from the date of the complaint. Section 42 of the POSCO Act, 2012 has been amended to clarify that if an offense punishable under the POSCO Act, 2012 and the Indian Penal Code, 1860 is committed, the accused will be liable under both the laws whichever

[3]Jhalak Kakkar and Shruti Ojha*, "An Analysis of the Vanishing Point of Indian Victim Compensation Law*" Journal of Indian Law and Society, Volume. 2.
[4] AIR 1980 SC 1632
[5] 1978 SCR (2) 358
[6]N.V. Paranjape, "*Criminology and Penology with Victimology',* 16th Edition, Central Law Publications, Allahabad, 2014, p. 571.

is graver. The penal code was revised in 2018 to make penalties for sex crimes stricter and more severe. Section 376AB, 376DA and 376DB provides punishment for rape or gang rape of girls under 12 years of age. For this purpose, girls under 16 years of age were also added to the Criminal Code of 1860. New regulations have also been made in Section 376, which punishes rape victims. Article 376 has been amended to provide a minimum period of 7 to 10 years[7]. These changes represent efforts by the legislature and administration of the Government of India to prevent and reduce crimes, especially against women and children. However, the biggest concern is whether the changes and protections made are sufficient to protect the rights of victims and ensure their safety in the future.

According to the new regulations, all trials or investigations regarding sexual offenses must be completed within two months from the date of the complaint. Section 42 of the POSCO Act, 2012 has been amended to clarify that if an offense punishable under the POSCO Act, 2012 and the Indian Penal Code, 1860 is committed, the accused will be liable under both the laws. which is heavier. The penal code was revised in 2018 to make penalties for sex crimes stricter and more severe. Articles 376AB, 376DA and 376DB Punishment for rape or gang rape of girls under 12 years of age.For this purpose, girls under 16 years of age were also added to the Criminal Code of 1860. New regulations have also been made in Section 376, which punishes rape victims. Article 376 has been amended to provide a minimum period of 7 to 10 years. These changes represent efforts by the legislature and administration of the Government of India to prevent and reduce crimes, especially against women and children[8]. However, the biggest concern is whether the changes and protections made are sufficient to protect the rights of victims and ensure their safety in the future[9].

It is impossible to ignore the secondary trauma of the victims during the trial. In the 1972 Mathura riots, the Bombay High Court convicted two police officers on rioting charges; We saw in the 1992 Bhanwari Devi gangster case that the police treated the gangsters very badly, unfairly and illegally;

[7]Thakur Sky, *"Victim Compensation in Indian Criminal Justice System*", LAP Lambert Academic Publishing, 2019.

[8]Lalit Dadwal, "*Position of Human Rights: An Indian Profile*", 2nd ed., Civil and Military Journal.

[9]A.S. Anand (Justice), "*Victims of Crime – The Unseen Side*", (1998) Supreme Court Cases (3).

and recently. We have seen the famous Unnao gang rape case, where the victim was beaten, used as an example of the victim's lack of protection and security, loss of rights. Government and legislatures must ensure the effectiveness of the law and the treatment of victims of violence[10]. It should not be forgotten that one of the main factors causing delay in justice is corruption. It undermines the public's confidence in the administration of justice. Money or bribes are not the only means of corruption. Other types of corruption also exist, such as psychological and health. We all know that wrong mind always leads to wrong, moral or other behavior and activities. Social corruption involves silencing issues of public concern in order to get votes for politicians, while social corruption involves accepting monetary bribes. In the past, corruption in the judiciary had mainly affected court employees, but the development now shows that judges in higher and lower courts are being scrutinized for illegal activities and even arrested on corruption charges.

1.1 VICTIMOLOGY AND ITS EVOLUTION

As is well known, India's criminal justice system developed throughout the more than 200 years of British rule. The majority of the rules regulating the administration of criminal justice were written by Englishmen in British India during their anarchic control over the people of India with the main goals of putting down any rebellion against their arbitrary actions and punishing political prisoners. We are often reminded of the colonial mindset with which the British drafted this important penal statute when we see provisions like sedition and marital rape as exceptions to rape within the Indian Penal Code of 1860. In addition to this, we continue to abide by several other laws that were written with a draconian attitude, such as the Indian Police Act of 1861, the Indian Evidence Act of 1872, and many more. Although the Indian parliament significantly altered these laws after India gained its independence, the clamour for their repeal is growing every day as time goes on.

It is a fact that the policing system is the foundation of the criminal justice system in every country, as police are always the first to respond to a crime scene and are tasked with determining whether a crime has been committed or not in accordance with local criminal laws. Our policing system in India is still governed by the colonial law of 1861, which requires significant reforms in order to

[10]Rekha Rai, "*Right of Victim for Compensation in India: A Historical Background*" International Journal of Law, ISSN: 2455-2194, RJIF 5.12, Volume 2; Issue 4; July 2016

advance, train, and develop the police departments in various scientific and information technology fields, so they can track down and maintain control over the new era of crimes and criminals in India, including white collar crimes committed by the elite and professional classes as well as cyber-crime, trafficking in human organs, and more. Since organized crime and disorganized crime are two common kinds of crimes from the 20th century, each of these categories have roughly the same proportion of negative effects on society. In addition to this, there have been several instances recently when people in positions of authority have committed crimes.

All of these crimes demand that the administration of the criminal justice system consider the rights of the victims of such crimes. For a very long time, victimology was not given the same priority as criminology within the Indian criminal justice system, despite the fact that criminology deals with crimesand their jurisprudential implications. Since a few decades ago, the problem of the rights of crime victims has been more prominent thanks to the court system, the work of several distinguished jurists, and the initiatives of numerous social and non-governmental groups. Governments created the criminal justice system as a tool to punish and penalize people who break the law in an effort to reduce crime.

1.2 ORIGIN OF VICTIM

The offender, the crime scene, the weapons, and the witnesses who saw it happen are all equally responsible for the crime as is the victim, who makes up half of the criminal offense. “Since the dawn of human culture and civilization, the concept of being a victim has existed. Although its current meaning can vary greatly depending on the context in which it is used, its original meaning is centered on the act of making a sacrifice. During the development of victimology in the 1940s, victimologists like Mendelsohn, Von Hentig, and Wolfgang saw victims as helpless dupes who brought about their own victimization.” After the Second World War, this happened. As a result, several ideas of victim-offender and victim-precipitation dyads were created, and the victim-blame approach was developed. The victim had long gone beyond their prime, yet this was the last blow that ended their suffering for good.

When modern governments were established and took over the task of punishing offenders, the victim, who had historically had an important place within the legal system, was eliminated from

the equation. The biggest coverage hole in this instance, though, was the sufferer's lack of empathy. The irony of the situation is that the system was so massively and carefully designed for the very goal of easing the pain of the victim. He has no status, no rights, and ultimately no needs. He has no credibility, no legal standing, and ultimately, no needs. Even while the situation has improved as a result of several international pronouncements and the victim movement throughout the globe, this "lost and deserted" portion of the criminal justice system is still in a black hole.

“Police, judges, and prosecutors—the people who are supposed to be the supporting pillars of a criminal justice system—most frequently display apathy. This holds true regardless of where you are on the planet, including India. The legal system cannot always serve as a shield for individuals who have been harmed, even if it is meant to be on the side of victims. To achieve real progress, it is necessary to change the thinking of the masses, the general public, governments, authorities, and the victims themselves.” Since their wants and rights are human rights just like everyone else's, they must stop agonizing and begin organizing for them. The idea of social justice, which is our constitution's signature song, can only beachieved then and only then will we be able to continue in the footprints of Mahatma Gandhi, our country's founding father. India's criminal justice system, which incorporates fundamental principles including crime prevention, criminal rehabilitation, and criminal punishment, is based on the British model of criminal justice. The Indian criminal justice system was established by the Indian government as a means of deterring and punishing criminal activity. The criminal justice system is what is commonly referred as.

1.3 CONCEPTS OF VICTIM

According to Section 2(wa) of the CrPC, 1973, a victim is someone who has suffered loss or harm as a result of the accused person's alleged act or omission. This definition includes the victim's guardian or legal successor.[11]

"Victims" refers to individuals or groups of individuals who have been harmed, individually or collectively, as a result of acts or omissions that violate criminal laws in effect in Member States, including those that forbid criminal abuse of power. “This includes harm such as physical or mental injury, emotional suffering, economic loss, or significant impairment of one's fundamental rights.

[11]The Criminal Procedure Code, 1973 (Act 02 of 1973), s.2

No matter whether the offender is found, detained, charged, or convicted, or if the victim and the perpetrator are related, a person may be deemed a victim under this Declaration.[12]

The word "victim" also refers to those who have experienced injury when stepping in to help distressed victims or stop the victimization, as well as the victim's immediate relatives or dependents, if appropriate. A social welfare state would use specific statutory laws in cases of crimes against women or children to safeguard these groups of the population. For instance, the Protection of Women From Domestic Violence Act of 2005, the Protection of Children from Sexual Offence Act of 2012, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013—all of which are based on the Vishaka guidelines established by the Supreme Court of India in 1997—are special statutes that have been passed by the Indian Parliament to prevent crimes against women and children and to safeguard their fundamental human rights."

1.4 VICTIM'S RIGHTS AS HUMAN RIGHTS AND FUNDAMENTAL RIGHTS

The Constitution of India is the most notable instrument that is of the highest significance and sovereign in India with regard to guaranteeing basic fundamental rights and ensuring social, economic, and political fairness in India. In the form of fundamental rights and directive principles, our constitution safeguards and guarantees fundamental rights to both the victim and the offender. "For instance, Article 39-A of the Indian Constitution contains provisions regarding equal justice and free legal aid, which are based on the principle of natural justice and are applicable to both the victim and the offender. No one shall be denied justice because of their economic or social depravity or because of insufficient mechanisms for the administration of justice, according to this clause. The Preamble of the Indian constitution is referred to as "the identity card of the constitution" by renowned Indian lawyer Nani Palkhivala.[13] Concepts of social, economic, and political justice are included in the preamble of the Indian constitution, which is based on an objective resolution Pandit Jawaharlal Nehru delivered to the constituent assembly on December 13, 1946. Social justice includes the availability of justice for both the victim and the criminal.

[12] Jhon P.J Dussich, Victimology-Past, Present, and Future,

[13] Lashmikanth, M: Indian Polity (5th edition 2017) p 4.1

I.C. Golaknath v. State of Punjab, the leading case, was cited by Chief Justice Subba Rao as evidence.[14] The preamble of the constitution outlines the main goal of the document's authors. Additionally, the Supreme Court noted in the case of Nandini Sundar v. State of Chhattisgarh that the preamble's guarantee to uphold social, economic, and political fairness cannot be ignored or disregarded. The preamble defines 'equality' as including 'civil, political, economic, and legal equality. The right to equality is recognized as a fundamental right in Article 14 of the Indian constitution, and Articles 15 (3) and (4) grant the state the authority to make special provisions for women and children as well as for the advancement of scheduled castes and scheduled tribes. As a result of this article, the Indian Parliament has passed numerous statutes that serve to protect, provide for, and preserve the basic fundamental rights as well as to guarantee equal access to justice.

Criminal law excludes victims from the criminal justice system and regards them similarly to witnesses to a crime against the state. Their only function is to provide testimony. This is a key factor in victims' frustration with the criminal justice system when they seek compensation for the harm they endured. People with rights and advantages are victims. Crimes violate the rights of victims as well as having an impact on society." Although crime victims are not directly mentioned in human rights documents like the Universal Declaration of Human Rights, the documents have still established a number of rights for them that may be seen from the victim's point of view.[15]

2. IMPORTANCE OF TOPIC

In every crime only one person is forgotten who is known as the victim of the crime. After the crime it becomes very tough for the victim to live his life in a dignified manner. Every time they spent their life in a trauma. The question of living with proud in front of him remains open. Though the Criminal Justice system of India supports the victims of crimes and provide measures to uplift the victims yet the victims are not getting adequate security, assistance and also not able to get the right to heard. Apart from this always they have to struggle with a problem that how they will overcome from the impact of crime.

3. NEED OF RESEARCH TOPIC

[14] *I.C Golak Nath* v *State of Punjab* AIR 1967 SC 1643

[15] Jayasimha, B, Protections of Victims' Rights in the Criminal Justice System a Critical Study,

This research study may be useful for the purpose of removing the loopholes and reshaping the Indian criminal justice system regarding compensation to victim of crime and also introduce more adequate steps to remove the hurdles from the road of social welfare. Apart this various flaws of the system such as, delay in awarding the appropriate compensation to the needy person as well as provisions related to rehabilitation may be reformed through which survivor of the crime may get support to live a dignified life, without having any trauma in their mind. It might be possible for them that they will be able to get the right of proper assistance as well as right to be heard.

4. LITRATURE REVIEW

RATANLAL AND DHEERAJLAL[16], in his book, '***THE INDIAN PENAL CODE"***reviewed of pertinent literature has made it easier for me to conduct research on understanding the fundamental concepts of crime and victimization, including the rights that are available to women who have been victims of crime, the major benefits of the crime victim protection provided under the Criminal Law Amendment Act of 2013, the rights that the state has as a victim of crime, and some other crucial issues.

K.D. GAUR[17],in his book"***THE CODE OF CIVIL PROCEDURE***", focuses on comprehending the witness procedure, the rights and obligations of crime victims during the trial of summons as well as warrant cases, the rights of victims during the filing of a FIR, the rights of a complainant before the magistrate, plea-bargaining, and some other crucial aspects of criminal procedure, the procedure of maintenance of children and parents, as well as a crime victim's right to compensation. The review of this amount of material as part of my research study allows me to do this.

PROF. S.R. BHANSALI[18], in his book "***THE CONSTITUTION OF INDIA***" concentrated on the fundamental rights and guiding principles available to a victim of crime under the Indian

[16]RatanlalandDheerajlal, *"The Indian Penal Code*", 35th Ed., Eastern Book Company, 2017.

[17] K.D. Gaur, "*The Code of Civil Procedure*", 1st Edition, 2016.
[18] Prof. S.R. Bhansali, "*The Constitution of India*" 1st Edition, 2015.

Constitution when I evaluate this work. Articles 14 to 21 on basic rights are among them, as are sections 39A, 41, 46, and article 51(c), which list the directive principles of state policy.

O.P. MISHRA[19], in his book ***"LAW RELEATING TO WOMEN AND CHILD***",evaluateda better knowledge of mothers and children who have been victims of crime. The Prevention of Children from Sexual Offenses Act (2012), the Domestic Violence Act (2005), and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act (2013) were all taken into consideration when examining these victims.

PARIDHI SHARMA&HARSHA BHALSE[20], in their book "***PENOLOGY, AND VICTIMOLOGY***" discussed about the foundational understanding of victimology and the legal issues pertaining to victims as a consequence of reading this collection of work.

5. RESEARCH OBJECTIVES

This study will be conducted with the following research objectives:

1. To gain a better understanding of the victim's situation and status in relation to the objectives of the criminal justice system.
2. To ascertain the several components that each of the rights granted to victims under Indian criminal justice system.
3. To determine National legal framework that conforms with standards and guidelines set in UN Declaration.
4. To evaluate the efforts made by the judiciary to accommodate the needs of victims.
5. To offer some suggestions that should be done under Indian criminal justice system for victims.

6. RESEARCH GAP

[19] O.P. Mishra, *"Law Relating to Women and Child*", 6th Edition, 2020.
[20] Paridhi Sharma&HarshaBhalse,"*Penology, And Victimology*", 1st ed., Amar Law Publication, Indore.

The present study will be covering up the statutory as well as constitutional provisions of India in the light of judgments as pronounced by the Apex Court of India and various High Courts. Efforts may be made to find out the compensatory provisions under Indian criminal justice mechanism with a idea to offer some suggestions which can be fruitful to the legislature in various ways. Efforts shall be made to check the awareness of mass towards the rights of victims. An attempt also can be made to point out the loopholes which required a fresh look in present prospective.

7. HYPOTHESES

1. The current legal system is only about giving reimbursement and compensation to victims without taking into account other rights that need to be recognized and enforced, which is a good thing but not sufficient.

2. India's legal system is ineffective when compared to international instruments that recognize the rights of victims of violence.

3. Due to the nonexistence of explicit provisions under the criminal legal system of India recognizing the rights of victims, courts have experienced difficulty in setting standards for the protection of the rights of victims of violence.

8. RESEARCH METHODOLOGY

The research study will be used doctrinal method. The data were obtained from both primary and secondary sources. In this way researcher has been used textbooks, various legal provisions, articles, analyzing the judgements of the Supreme Court and various High Courts decided till date, articles published in journals, Newspapers and literature available on the topic on internet. Evaluating and analyzing legal and judicial decisions requires a descriptive approach. During the analysis, original sources of important documents, such as Reports of the Law Commission and High Power Commission both at the national and international level, has to be consulted. Important secondary sources such as legal writing will be used for critical analysis. Standard certificates and reference materials will be used in the study. The conclusion of the research will be drawn by critically analyzing the importance of the sources.

9. RESEARCH DESIGN

Independent variables will have been used during the research. Following are the study dependent variables:

1. Fundamental rights of Victims
2. Bhartiya Nagrik Surkasha Sanhita
3. Bhartiya Nyaya Sanhita
4. The Bhartiya Sakshya Adhiniyam, 2023

CHAPTER 1- INTRODUCTION

In Introductory Chapter. Researcher will have discussed review of literature, research objectives, research methodology, scope, limitations of the research, hypothesis, research methodology and chapterization.

CHAPTER 2- CONCEPT AND STATUS OF VICTIM UNDER INDIAN CRIMINAL JUSTICE SYSTEM

This chapter probes into the conceptual and the ideological understating of the term victim as prevalent in different societies.

CHAPTER 3- VICTIMS' RIGHTS UNDER INDIAN CRIMINAL JUSTICE SYSTEM

In this Chapter, rights of the victims given under constitution and various statutes will have been discussed.

CHAPTER 4- INTERNATIONAL REGIME RELATED TO VICTIM

In this chapter, researcher deals with the International regime related to the victims.

CHAPTER 5- NATIONAL LEGAL FRAMEWORK REGARDING VICTIM

In this chapter, an analysis of Statutes and schemes pertaining to victim will have been made. Legislative protection to victims and their position under Indian law will have been discussed.

CHAPTER 6- JUDICIAL TREND WITH SPECIAL REFERENCE TO VICTIM

Indian law plays an important role in protecting individual rights through many decisions and directives. The main purpose of the judiciary is to protect the fundamental rights of the person guaranteed by the Constitution. It is clear that judicial decisions have a significant impact on the formulation and application of national law. In this chapter, the researcher has made an attempt to discuss the judicial process related to victims.

CHAPTER 7- CONCLUSION AND SUGGESTIONS

In the light of the various objectives of this research work, the researcher has drawn some major findings and give suggestions. Hypotheses formulated in the beginning of this research study will have been duly tested.

10. TENTATIVE CHAPTERS

CHAPTER 1- INTRODUCTION
CHAPTER 2- CONCEPT AND STATUS OF VICTIM UNDER INDIAN CRIMINAL JUSTICE SYSTEM
CHAPTER 3- VICTIMS' RIGHTS UNDER INDIAN CRIMINAL JUSTICE SYSTEM
CHAPTER 4- INTERNATIONAL REGIME RELATED TO VICTIM
CHAPTER 5- NATIONAL LEGAL FRAMEWORK REGARDING VICTIM
CHAPTER 6- JUDICIAL TREND WITH SPECIAL REFERENCE TO VICTIM
CHAPTER 7- CONCLUSION AND SUGGESTIONS

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